

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KATHLEEN A. MARTIN,

Plaintiff,

v.

MERCK & CO., INC., et al.

Defendants.

CIVIL ACTION No. 05-11716-MLW

**MERCK'S MEMORANDUM SUBMITTED IN REPLY TO PLAINTIFF'S OPPOSITION
TO MERCK'S MOTION TO STAY**

Defendant Merck & Co., Inc. ("Merck"), through its undersigned counsel, hereby submits this Reply Memorandum in Response to Plaintiff's Opposition to Merck's Motion to Stay ("Opposition" or "Plaintiff's Oppositions").

1. Staying this case, including all pending motions, pending its transfer to *In re VIOXX Prods. Liab. Litig.*, MDL-1657, the multidistrict proceeding in the Eastern District of Louisiana will not, as Plaintiff alleges in her Opposition, delay the resolution of these issues. Contrary to Plaintiff's assertions concerning the situation at the Eastern District of Louisiana in the aftermath of Hurricane Katrina, the court in Louisiana has already established a procedure for accepting filings at the temporary offices of the Clerk of Court for the Eastern District of Louisiana in Lafayette, Louisiana. See Notice to All Counsel, *In re VIOXX Prods. Liab. Litig.*, MDL-1657, September 15, 2005 (attached hereto as Exhibit A). The MDL court is capable of resolving the issues presented by Plaintiff's Motion to Remand, and staying this litigation pending its final transfer to the MDL will serve judicial economy by consolidating this case with countless similar cases in one proceeding.

2. Since Plaintiff filed her Opposition to Merck's Motion to Stay, the Judicial Panel on Multidistrict Litigation ("JPML") issued Conditional Transfer Order No. 24 on September 16, 2005, transferring this matter to the consolidated proceedings in Louisiana pending any party's objection to that transfer within 15 days. *See* Conditional Transfer Order No. 24 (attached hereto as Exhibit B). In doing so, the JPML found that this matter "involve[s] questions of fact which are common to the actions previously transferred to the Eastern District of Louisiana and assigned to Judge Fallon." *See* Conditional Transfer Order No. 24. This court should therefore stay this action and permit the MDL court to complete transfer of this case (and any objections thereto), to rule on the many pending motions in this case, and to conduct coordinated pretrial proceedings for this and countless similar actions.

3. As Merck argued in its Motion to Stay, judicial economy mandates a stay in this case. Because this case has already been transferred to the MDL in Conditional Transfer Order No. 24, allowing this matter to proceed here, including ruling on the pending motions, risks duplicating the work of pretrial proceedings and discovery in the MDL. In addition, staying the case avoids the possibility of conflicting rulings between this court and the MDL. For these reasons, many other courts, including this one, have concluded that staying VIOXX® cases pending their coordination in the MDL is the most sound use of judicial resources. *See Lach v. Merck & Co., Inc.*, No. 05-CV-10583-PBS (D. Mass. Apr. 25, 2005).

MERCK & CO., INC.
By its attorneys:

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Dated: September 26, 2005

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document was served on September 26, 2005 electronically upon:

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/s/ Lucy Fowler

EXHIBIT A

In re: VIOXX	*	MDL Docket No. 1657
	*	
PRODUCTS LIABILITY LITIGATION	*	SECTION L
	*	
	*	JUDGE FALLON
This document relates to All Cases	*	
	*	MAGISTRATE JUDGE
	*	KNOWLES
	*	
	*	
	*	
* * * * *		

Effective immediately, all filings in this case should be made at the temporary offices of the Clerk of Court for the Eastern District of Louisiana located at 102 Versailles Street, Suite 501, Lafayette, Louisiana 70501. Telephone number (337) 262-6700. Although filings can be made in Houston, Texas, Baton Rouge, Louisiana, and Houma, Louisiana, the Court requests that the filings be made in Lafayette whenever possible.

EXHIBIT B

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

SEP 16 2005

FILED
CLERK'S OFFICE

DOCKET NO. 1657

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE VIOXX PRODUCTS LIABILITY LITIGATION

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-24)


On February 16, 2005, the Panel transferred 138 civil actions to the United States District Court for the Eastern District of Louisiana for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Since that time, 1,551 additional actions have been transferred to the Eastern District of Louisiana. With the consent of that court, all such actions have been assigned to the Honorable Eldon E. Fallon.

It appears that the actions on this conditional transfer order involve questions of fact which are common to the actions previously transferred to the Eastern District of Louisiana and assigned to Judge Fallon.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the Eastern District of Louisiana for the reasons stated in the order of February 16, 2005, 360 F.Supp.2d 1352 (J.P.M.L. 2005), and, with the consent of that court, assigned to the Honorable Eldon E. Fallon.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Eastern District of Louisiana. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:


Michael J. Beck
Clerk of the Panel

**SCHEDULE CTO-24 - TAG-ALONG ACTIONS
DOCKET NO. 1657
IN RE VIOXX PRODUCTS LIABILITY LITIGATION**

<u>DIST. DIV. C.A. #</u>	<u>CASE CAPTION</u>
ALABAMA NORTHERN ALN 7 05-1763	Gary Oswalt v. Merck & Co., Inc.
CALIFORNIA CENTRAL CAC 2 05-5867	Joyce Moore, et al. v. California Hospital Medical Center-Los Angeles, et al.
CALIFORNIA NORTHERN CAN 3 05-3237 CAN 3 05-3361 CAN 3 05-3362	Christopher Dunn v. Merck & Co., Inc. Alan Ruckert v. Merck & Co., Inc. Elsie Shuely v. Merck & Co., Inc.
CONNECTICUT CT 3 05-1275	Patricia J. Davis, etc. v. Merck & Co., Inc.
FLORIDA MIDDLE FLM 8 05-1535	Edward Jackson v. Merck & Co., Inc.
FLORIDA SOUTHERN FLS 1 05-22170 FLS 1 05-22287	Gloria Levine, et al. v. Merck & Co., Inc. Dorothy Tomlinson v. Merck & Co., Inc.
ILLINOIS SOUTHERN ILS 3 05-601	Norma Henderson, etc. v. Merck & Co., Inc.
KENTUCKY WESTERN KYW 1 05-113 KYW 1 05-114 KYW 1 05-115 KYW 1 05-116 KYW 1 05-117 KYW 4 05-119 KYW 4 05-120 KYW 4 05-121	William Warinner v. Merck & Co., Inc. Frances Skaggs v. Merck & Co., Inc. William Flatt v. Merck & Co., Inc. LaRue Turner v. Merck & Co., Inc. Jimmie Kinnard v. Merck & Co., Inc. Clara I. Durall v. Merck & Co., Inc. Elmer Nelson v. Merck & Co., Inc. Janice Stover v. Merck & Co., Inc.
MASSACHUSETTS MA 1 05-11716	Kathleen Martin v. Merck & Co., Inc.
MARYLAND MD 8 05-2073	Vivian Shinberg v. Merck & Co., Inc.
MINNESOTA MN 0 05-1876	Sandra L. Day, etc. v. Merck & Co., Inc.
MISSOURI EASTERN MOE 4 05-1268 MOE 4 05-1272 MOE 4 05-1273	Michael Elder, et al. v. Merck & Co., Inc., et al. Nina Cook, et al. v. Merck & Co., Inc., et al. George Likins, et al. v. Merck & Co., Inc., et al.
NORTH CAROLINA MIDDLE NCM 1 05-724	John Johnson v. Merck & Co., Inc.
NEW YORK SOUTHERN NYS 1 05-7241	Emanuel Makropoulos, et al. v. Merck & Co., Inc.

SCHEDULE CTO-24 TAG-ALONG ACTIONS (MDL-1657)

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DIST. DIV. C.A. #

CASE CAPTION

NYS 1 05-7242 Jilly Boiangiu, et al. v. Merck & Co., Inc.
NYS 1 05-7301 Douglas A. Spalter, et al. v. Merck & Co., Inc., et al.

OHIO SOUTHERN
OHS 2 05-787 Dennis Hawk v. Merck & Co., Inc.

PENNSYLVANIA EASTERN
PAE 2 05-587 Diane Mitchell, et al. v. Merck & Co., Inc., et al.
PAE 2 05-4322 Carl Howard, et al. v. Merck & Co., Inc., et al.

TENNESSEE EASTERN
TNE 3 05-388 George T. Grubb v. Merck & Co., Inc.

TENNESSEE WESTERN
TNW 1 05-1231 Hazel Pearson v. Merck & Co., Inc.

TEXAS EASTERN
TXE 1 05-567 Alison Nettles, et al. v. Medical Center of Southeast Texas, LP, et al.
TXE 2 05-366 Dale R. Anderson, et al. v. Merck & Co., Inc., et al.
TXE 2 05-367 Vince Andrade, et al. v. Merck & Co., Inc., et al.
TXE 2 05-368 Mary E. Barclay v. Merck & Co., Inc., et al.
TXE 2 05-369 John S. Breeding, et al. v. Merck & Co., Inc., et al.
TXE 2 05-370 Barbara D. Brice, et al. v. Merck & Co., Inc., et al.
TXE 2 05-371 Guadalupe Duran, et al. v. Merck & Co., Inc., et al.
TXE 2 05-372 Mary D. Gonzales, et al. v. Merck & Co., Inc., et al.
TXE 2 05-373 Sharon L. Kelly v. Merck & Co., Inc., et al.
TXE 2 05-374 Johnny Prado, et al. v. Merck & Co., Inc., et al.
TXE 2 05-375 Lee St. John, et al. v. Merck & Co., Inc., et al.
TXE 2 05-376 S. Susan J. Preston, et al. v. Merck & Co., Inc., et al.
TXE 2 05-377 Mona L. Price v. Merck & Co., Inc., et al.
TXE 2 05-378 Susan C. Rogers, et al. v. Merck & Co., Inc., et al.
TXE 2 05-379 Mary R. Ruiz, et al. v. Merck & Co., Inc., et al.
TXE 2 05-381 Anita A. Shannon, et al. v. Merck & Co., Inc., et al.
TXE 2 05-382 Martha A. Shull, et al. v. Merck & Co., Inc., et al.
TXE 2 05-383 Andrew E. Sisneros, et al. v. Merck & Co., Inc., et al.
TXE 2 05-384 Johnny M. Wallace, et al. v. Merck & Co., Inc., et al.
TXE 2 05-385 Donna R. Wesley v. Merck & Co., Inc., et al.
TXE 2 05-390 Jean E. Badger v. Merck & Co., Inc., et al.
TXE 2 05-391 Fannie L. Frazier v. Merck & Co., Inc., et al.
TXE 2 05-392 Cleta A. Johnson, et al. v. Merck & Co., Inc.
TXE 2 05-393 Peggy J. Newman v. Merck & Co., Inc., et al.
TXE 2 05-394 Paula S. Quattlebaum v. Merck & Co., Inc., et al.
TXE 2 05-397 Josefina R. Rivera v. Merck & Co., Inc., et al.
TXE 2 05-398 Joe Sullivan, et al. v. Merck & Co., Inc., et al.

TEXAS SOUTHERN
TXS 4 05-2864 Blair Justice, Ph.D., et al. v. Merck & Co., Inc.
TXS 4 05-2865 Chris Connally, et al. v. Merck & Co., Inc.

TEXAS WESTERN
TXW 6 05-305 Charlotte Leifester v. Merck & Co., Inc.

WASHINGTON WESTERN
WAW 2 05-1419 Thomas Dunlap, et al. v. Merck & Co., Inc.

WEST VIRGINIA SOUTHERN
WVS 1 05-665 Annie Potter v. Merck & Co., Inc.
WVS 1 05-668 Lucy Kidd v. Merck & Co., Inc.
WVS 5 05-663 Jency J. Tincher, et al. v. Merck & Co., Inc.